

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

40304

FILE: B-179505

DATE: January 21, 1974

MATTER OF: Servrite International, Ltd., Old Dominion Dairy Products, Inc., and Central Dairies Limited

DIGEST: Under solicitation requesting offers for providing milk and dairy products which required contractor to furnish products conforming to clearly stated specification requirements, responsible contractor who is capable of performing contract is not required to (1) submit proof that it will carry out terms of contract; (2) provide detailed written delivery schedules prior to award where there is no such requirement in solicitation; further, addition of cost factor for contractor changeover in evaluation not set out in solicitation is improper since procuring activity could choose any amount it desired and evaluation factors must be set out in solicitation.

Regarding contention that successful offeror failed to submit cost data and offer was so low as to raise serious questions concerning successful offeror's responsibility, when there is adequate competition cost or pricing data not required and where, as in present case, offeror is determined to be responsible contractor and has submitted acceptable offer, award may not be denied because offer is unreasonably low or even unprofitable.

On May 15, 1973, request for proposals (RFP) F65050-73-R-0013, was issued at Goose Air Base, Labrador, Canada. The RFP solicited offers for providing milk and dairy products to the 95th Strategic Wing, located at Goose Air Base, for the year commencing October 1, 1973. The closing date for the receipt of offers was July 25, 1973. The following three offers were received in response to the RFP:

Central Dairies Limited	\$64,627.46
Old Dominion Dairy Products Inc.	67,417.00
Servrite International, Ltd.	72,487.13

The Government estimate was \$70,558.00. By letter of August 15, 1973, Servrite International Ltd. (Servrite), protested the award of a contract to Central Dairies Limited (Central). Servrite stated that the bases for its protest were that (1) Central had not demonstrated

744276/087992

that all of its ingredients were procured from an approved source and would meet the exact requirements of the specifications; (2) Central had not provided detailed delivery schedules in writing prior to award demonstrating ability to meet the start date; (3) Central had not provided the Air Force with detailed cost data and, in fact, the offer was so low as to raise serious questions concerning Central's responsibility; (4) the Air Force had not been assured that Central thoroughly understood the terms of the contract and Central had not provided proof that it would carry out the terms of the contract; and (5) the Air Force should consider in its award of the contract that Servrite is the incumbent with all of its equipment already installed and that the Air Force would be required to ship all of Servrite's equipment back to the United States if Servrite did not get the award. It is Servrite's view that if the last factor is considered it submitted the low offer.

Also, in this connection the second low offeror, Old Dominion Dairy Products, Inc. (Old Dominion), by letter of September 4, 1973, protested against award to Central on the bases that (1) Central did not have the financial responsibility or the technical know-how and personnel to perform the contract; (2) Central had not made at the time of its offer, or at any time prior to award, arrangements for the acquisition and transportation of the necessary production equipment; and (3) the Government, subsequent to award, agreed to airlift Central's machinery, equipment and supplies to Goose Bay and that this was not one of the terms of the solicitation. Old Dominion also stated that Central had a history known to the procurement office which would raise some questions concerning Central's integrity.

Regarding Servrite's contention that Central had not demonstrated that all of its ingredients are procured from an approved source and will meet the requirements of the specifications, Section J, paragraph SP-01 of the RFP provides as follows:

"The contractor agrees to produce and furnish the products listed on the Schedule of Items at the Unit Prices indicated to the United States Government at Goose Bay, Labrador, as called for by the Contracting Officer or his authorized representative. All such milk and dairy products will be prepared and supplied in strict accordance with the Contract Schedule (Schedule of Supplies or Services), Specifications and the Special and General Provisions."

To assure compliance with the specification requirements we are advised that inspection and acceptance of the basic ingredients will be performed by a Canadian inspection service authorized by the U.S. Department of Agriculture. Also, according to Section I-1b and I-1c of the RFP, the inspection and acceptance of other ingredients shall be performed at the contractor's plant by a United States military veterinarian and that a final inspection of the finished product shall be performed by the Base Veterinarian. Additional assurance is provided by Section I-1d which provides that the contractor's processing of milk and milk products may be under continuous United States Military Veterinary surveillance. Also, Section I-2 provides that (1) laboratory tests to determine compliance with contract requirements will be performed in laboratories designated by the Base Veterinarian and; (2) no-notice inspections will be performed by USAF Veterinary Services in the recombining plant and test weights made to determine vegetable fat content by weight percentages.

In view of the fact that all of the above-mentioned RFP provisions are contained in the contract awarded to Central, it would appear that the Air Force has ample means not only to require Central to obtain all of its ingredients from approved sources but also to guarantee compliance with the specification requirements. Since, as will be discussed later, the Air Force has determined that Central is a responsible contractor capable of performing this contract, there appears to be no reason to believe that Central will not use ingredients obtained from an approved source or that it will not supply milk and dairy products meeting specification requirements.

In regard to Servrite's contention that Central did not provide detailed written delivery schedules prior to award demonstrating its ability to meet the start date, there is no requirement in the solicitation for such documentation. However, we are advised that Central had most of its supplies and equipment on site or in transit prior to award and that Central anticipated no difficulty in meeting the starting date. But in any event, the solicitation did recognize the possibility that the successful contractor might not have its equipment in place and ready for operation by the starting date and did provide for this contingency. Paragraph SP-26, Section J, of the solicitation provides that the contractor is to commence deliveries of the required items not later than the sixth calendar day following the day on which Government furnished facilities are made available to the contractor. This section further provides that should the contractor fail to meet this requirement, needed milk products are to be obtained from alternate sources and the contractor is to be liable for any cost in excess of the contract price.

Servrite also contends that Central did not provide the Air Force with detailed cost data and, in fact, Central's offer was so low as to raise serious questions concerning Central's responsibility. In its letter of November 12, 1973, Servrite also questions Central's responsibility on the basis that Central has, subsequent to award, hired Servrite's former employees and will rely on their know-how to perform this contract. According to section 3-807.3(f) of the Armed Services Procurement Regulation (ASPR) when there is adequate price competition, cost or pricing data shall not be requested regardless of the dollar amount involved. In the present case, there appears to have been adequate price competition. Concerning Servrite's allegation that Central's offer was so low as to raise serious questions concerning Central's responsibility, we note that Central's offer was less than \$3000 lower than the second low offeror. It does not appear that this small difference is sufficient to indicate either a lack of understanding of the contract requirements or a lack of responsibility by Central. Also, in regard to Central's responsibility, we are advised that Central operates three milk plants which supply over 50 percent of all reconstituted milk consumed in the province of Newfoundland and currently provides all non-USAF reconstituted milk for the Happy Valley-Goose Bay area. Central is also performing under a Canadian Commercial Corporation contract which supplies recombined milk for the Argentia Naval Air Station. Moreover, since Mr. Humphrey Pike, Central's General Manager, and his father at one time were employed in the Goose Air Base milk plant, it would stand to reason that Mr. Pike is familiar with the plant's operation. Thus, it would appear, contrary to the contention in Servrite's letter of November 12, that Central has sufficient experience to perform this contract without the necessity of relying on the know-how of Servrite's former employees. However, it should be pointed out that any experienced employee that Central hires in all likelihood would have gained his experience as the result of employment with another firm and we are unaware of any basis for objecting to Central's hiring of such an employee. In regard to Central's financial position, the Royal Bank of Canada Branch in Newfoundland, where Central carries on its corporate business, advised the contracting officer that Central has an excellent credit rating. Thus, we can find no basis for objecting to the determination by the contracting officer that Central is a responsible contractor. Concerning the question of whether Central's offer was unreasonably low, we have held that award may not be denied on the sole basis that an offeror submitted an unprofitable price. B-170228, September 22, 1970, B-173487, December 10, 1971. Thus, even if Central's offer was so low as to make the contract unprofitable, we would still have no basis to object to the award.

With reference to Servrite's contention that the Air Force was not assured that Central thoroughly understood the terms of the contract and that Central did not provide proof that it will carry out the terms of the contract, we note that Mr. Pike personally

discussed the provisions of the RFP with the contracting officer before submitting Central's offer. This coupled with the facts, previously mentioned, that not only does Central have extensive experience in the operation of this type milk plant, but Mr. Pike at one time was employed at the Goose Air Base milk plant leads us to the conclusion that Mr. Pike thoroughly understood the terms of the RFP. Moreover, since the contracting officer determined that Central's offer was acceptable and that Central was a responsible offeror capable of performing the contract, we fail to understand why Central should submit proof that it will carry out the terms of the contract. For that matter, we know of no documentation which would prove Central's intent to perform. Of course, if Central does fail to carry out the terms of the contract, it can be defaulted.

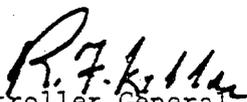
Concerning Servrite's contention that the Air Force should consider in its award of the contract that Servrite is the incumbent contractor with all of its equipment already installed and that the Air Force would be required to ship all of its equipment back to the United States if Servrite failed to receive the award, the contracting officer was of the opinion that if this evaluation factor was considered, an unfair advantage would result in favor of Servrite. We do not believe the contracting officer could have computed the offers of Central and Old Dominion by adding a cost factor for the changeover of contractors, an evaluation factor which was not set out in the solicitation. To hold otherwise would not only allow a procuring activity to choose any amount it felt would compensate it for the changeover in contractors, which would include transportation costs for shipment of equipment back to the United States, but would directly conflict with the decisions of this Office that all evaluation factors must be clearly spelled out in the invitation. B-167249, January 19, 1970. Also, see 36 Comp. Gen. 380, 385 (1956) and 45 Comp. Gen. 434, 435 (1966). Had the procuring activity felt that it might be financially advantageous to consider this factor in its evaluation of offers, a specific dollar amount would have had to have been spelled out in the solicitation so that the other offerors would have been informed of the financial value to the Government of not changing contractors.

Regarding the questions raised by Old Dominion concerning Central's financial responsibility, technical know-how and personnel, as well as its arrangements for the acquisition and transportation of necessary production equipment, we believe these matters have been sufficiently discussed and that further discussion is unwarranted. Concerning Old Dominion's statement that Central has a history known to the procurement office which would raise some questions in regard to Central's integrity, the procuring activity denies having any information which would reflect unfavorably on Central's integrity.

B-179505

Concerning Old Dominion's contention that the Government, subsequent to award, agreed to airlift Central's machinery, equipment and supplies to Goose Bay and that this was not provided for in the solicitation, the contracting officer denies that there was such an agreement, stating that most of Central's equipment and supplies were either on site or in transit via ship.

For the above reasons, the protests of both Servrite and Old Dominion are denied.

  
Deputy Comptroller General  
of the United States